
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

RODNEY S. RATHEAL,

Plaintiff,

vs.

LINDSAY McCARTHY, SEC; TOM
HARVEY, THE SALT LAKE TRIBUNE,

Defendants.

**ORDER DENYING
MOTION TO APPOINT
COUNSEL (ECF NO. 9)**

Case No. 2:17-cv-00997

Judge Dale A. Kimball
Magistrate Judge Evelyn J. Furse

Before the Court is Plaintiff Rodney S. Ratheal's Motion to Appoint Counsel filed on September 22, 2017. (ECF No. 9.) Mr. Ratheal has appeared pro se in this case, but has not filed an application to proceed in forma pauperis.

While defendants in criminal actions have a constitutional right to representation by an attorney, U.S. Const. amend. VI, Fed. R. Crim. P. 44, there is "no constitutional right to appointed counsel in a civil case." Durre v. Dempsey, 869 F.2d 543, 547 (10th Cir. 1989). Indigent parties in civil actions who cannot obtain counsel may apply for the appointment of counsel under 28 U.S.C. § 1915(e)(1), which allows a court to "request" an attorney to represent an indigent party. A court has discretion under §1915(e)(1) to appoint counsel or not. Shabazz v. Askins, 14 F.3d 533, 535 (10th Cir. 1994). The applicant has the burden to convince the court that his or her claim has enough merit to justify the court's appointing counsel. McCarthy v. Weinberg, 753 F.2d 836, 838 (10th Cir. 1985). Moreover, a plaintiff must provide evidence that he cannot afford counsel before the Court will appoint counsel on his behalf. See 28 U.S.C. § 1915(e)(1).


When deciding whether to appoint counsel, the Court considers a variety of factors, including “the merits of the litigant’s claims, the nature of the factual issues raised in the claims, the litigant’s ability to present his claims, and the complexity of the legal issues raised by the claims.” Rucks v. Boergermann, 57 F.3d 978, 979 (10th Cir. 1995) (quotations and citations omitted).

Mr. Ratheal asks the Court to appoint counsel, but states no reason for the request. Furthermore, he fails to provide a declaration demonstrating an inability to afford counsel.

For the reasons stated above, the Court DENIES Mr. Ratheal’s Motion to Appoint Counsel without prejudice. Mr. Ratheal may file a new motion to appoint counsel that includes a completed copy of the attached Application to Proceed in District Court Without Preparing Fees or Costs.

DATED this 29th day of September, 2017.

BY THE COURT:


EVELYN J. FURSE
United States Magistrate Judge

UNITED STATES DISTRICT COURT
for the

| | | |
|----------------------|---|------------------|
| Plaintiff/Petitioner |) | |
| v. |) | |
| Defendant/Respondent |) | Civil Action No. |
| |) | |

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: _____.
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____, and my take-home pay or wages are: \$ _____ per
(specify pay period) _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources (*check all that apply*):

- | | | |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ _____.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name